

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:13-CV-692-BO

BILLY S. McLAWHORN, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

COUNTY OF WAYNE, NORTH CAROLINA,
and WAYNE COUNTY BOARD OF
COMMISSIONERS,

Defendants.

ORDER

This matter is before the Court on defendant's motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6). [DE 10]. The motion is ripe for adjudication. For the reasons stated herein, the defendant's motion to dismiss is GRANTED in part and DENIED in part.

BACKGROUND

Plaintiff alleges that he is an emergency medical technician ("EMT") and that defendants are local government entities who employ EMT. Plaintiff further claims that defendants violated provisions of the Fair Labor Standards Act of 1983 ("FLSA") with regards to providing compensation for him while he was an EMT. Specifically, plaintiff claims that defendants willfully failed to pay him and his coworkers at a rate of one and one half times their regular rate of pay for each hour worked in a workweek in excess of forty hours per week and for hours spent attending continuing education. Plaintiff seeks to bring his action as a class against defendants.

Plaintiff's filed their complaint on October 2, 2013. Defendants filed their answer and motion to dismiss on October 29, 2013.

DISCUSSION


Defendants argue that the Wayne County Board of Commissioners was never an employer of plaintiff and therefore plaintiff's FLSA claim against the Board of Commissioners should be dismissed pursuant to Federal Rule of Civil procedure 12(b)(6). Plaintiff does not object to the dismissal of the Board of Commissioners. Accordingly the Court dismisses defendant Wayne County Board of Commissioners from this action with prejudice.

Defendant next argues that plaintiff's motion for class certification failed to comply with Local Civil Rules 7.1(d) and 7.2(a) and therefore should be dismissed. Plaintiff avers that his complaint was not a motion for class certification and that, at the appropriate time, plaintiff will move to amend the complaint so as to seek to certify a class pursuant to 29 U.S.C. § 216(b). The Court agrees that plaintiff's complaint does not contain a motion for class certification. The complaint is a notice pleading that provides notice to defendants that plaintiff intends to bring the action as a class action, but it is not a motion for certification. Therefore, the Court cannot deny or dismiss a motion for class certification at this time.

CONCLUSION

For the foregoing reasons, defendant's motion to dismiss is GRANTED IN PART and DENIED IN PART. Defendant Wayne County Board of Commissioners is hereby DISMISSED with prejudice from this action. Plaintiff's claim against Wayne County may proceed in its entirety.

SO ORDERED. This the 11 day of February, 2014.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE